

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 26

March 12, 1996, 2:37 p.m.
Page S-1808 Temp. Record

WHITEWATER EXTENSION/Cloture, Motion to Proceed (1st Attempt)

SUBJECT: Reauthorizing Funding for the Senate Special Committee to Investigate the Whitewater Development Corporation and Related Matters . . . S. Res. 227. Lott motion to close debate on the motion to proceed.

ACTION: CLOTURE MOTION REJECTED, 53-47

SYNOPSIS: As reported sequentially by the Banking Committee and the Rules Committee, S. Res. 227, a resolution to reauthorize funding for the Senate Special Committee to Investigate the Whitewater Development Corporation and Related Matters, will provide \$600,000 to the Special Committee to complete its investigation as authorized by S. Res. 120 (see 104th Congress, 1st session, vote No. 171) . The progress of that investigation has been slowed due to long delays by the White House and other parties to the investigation in making available requested information.

On March 7, 1996, Senator Lott sent to the desk, for himself and others, a motion to close debate on the motion to proceed to the resolution.

NOTE: A three-fifths majority (60) vote of the Senate is required to invoke cloture.

Those favoring the motion to invoke cloture contended:

The progress of the Whitewater Committee has been frustratingly slow, due mainly to the stalling tactics by White House officials and others who are under investigation. Despite those tactics, the Committee has been able to piece together much of the Whitewater puzzle, making some sense of the web of activities that have already resulted in so many criminal convictions and indictments of public and private individuals. Several key pieces are still missing, though, making an extension of this oversight investigation necessary. If the Committee is not able to complete its work, the Senate will not be able to fulfill its constitutional oversight responsibility. Americans need faith in their public institutions; the cloud that is hanging over the presidency because of Whitewater must be removed. The White House's delaying tactics must not be allowed to succeed. Unfortunately, Senate Democrats are now joining in the White House's efforts by trying to block the Committee from continuing. They say that they are of the opinion that the

(See other side)

YEAS (53)		NAYS (47)		NOT VOTING (0)	
Republicans (53 or 100%)	Democrats (0 or 0%)	Republicans (0 or 0%)	Democrats (47 or 100%)	Republicans (0)	Democrats (0)
Abraham	Helms	Akaka	Inouye		
Ashcroft	Hutchison	Baucus	Johnston		
Bennett	Inhofe	Biden	Kennedy		
Bond	Jeffords	Bingaman	Kerrey		
Brown	Kassebaum	Boxer	Kerry		
Burns	Kempthorne	Bradley	Kohl		
Campbell	Kyl	Breaux	Lautenberg		
Chafee	Lott	Bryan	Leahy		
Coats	Lugar	Bumpers	Levin		
Cochran	Mack	Byrd	Lieberman		
Cohen	McCain	Conrad	Mikulski		
Coverdell	McConnell	Daschle	Moseley-Braun		
Craig	Murkowski	Dodd	Moynihan		
D'Amato	Nickles	Dorgan	Murray		
DeWine	Pressler	Exon	Nunn		
Dole	Roth	Feingold	Pell		
Domenici	Santorum	Feinstein	Pryor		
Faircloth	Shelby	Ford	Reid		
Frist	Simpson	Glenn	Robb		
Gorton	Smith	Graham	Rockefeller		
Gramm	Snowe	Harkin	Sarbanes		
Grams	Specter	Heflin	Simon		
Grassley	Stevens	Hollings	Wellstone		
Gregg	Thomas		Wyden		
Hatch	Thompson				
Hatfield	Thurmond				
	Warner				

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Committee's authorization to work until February 29 was a deadline set in concrete. Further, these same Democratic Senators who can propose new deficit-spending proposals costing tens of billions of dollars without blinking an eye are now saying how exorbitant they think this \$1.3 million Senate investigation has been (counting the costs of both the recent inquiry and the brief inquiry that took place in 1994 when Democrats were in the majority in the Senate). For our part, we do not put a deadline on learning the truth, nor do we put a price tag on the integrity of the presidency.

Nine people so far have been convicted on Whitewater-related charges, including Webster Hubbell, a close confidant of President Clinton's who was the third-ranking law enforcement official in the country at the time of his felony convictions for fraud and tax evasion, and David Hale, a former judge and the former operator of Capital Management Services (CMS; David Hale has said that Mr. Clinton pressured him into making an illegal \$300,000 loan from CMS to his business partner, Susan McDougal, using funds that were supposed to go to the disadvantaged; that loan was never repaid). Additionally, seven more people are currently under indictment, including Arkansas Governor Tucker, who faces 14 felony charges, mostly for fraud, the McDougals (who were 50-50 partners with the Clintons in the Whitewater Development Corporation), who together face 27 separate felony charges, and Herb Branscum, Jr. and Robert Hill (who are close political allies of the Clintons), who face 11 felony counts stemming from the relationship between the Perry County Bank of Arkansas and President Clinton's 1990 campaign.

At the center of the Whitewater investigation we have the Whitewater Development Corporation, the Madison Guaranty thrift, the Rose Law Firm, Capital Management Services (CMS), the Arkansas Development Finance Authority, Lasater & Company, the Perry County Bank, the White House, and Vince Foster's suicide. The Madison Guaranty thrift failed, costing the American taxpayers \$68 million or more. Jim McDougal owned the Madison thrift; he and his wife were also partners with the Clintons in the Whitewater Development Corporation. The extent to which the Clintons put any of their own money into the Whitewater project is unclear. Where the money invested in the project came from is also unclear. What is very clear, however, is that the activities within and between these companies were often illegal, and that the taxpayers were left paying for them. It is also clear that Clinton Administration officials unethically and perhaps illegally have stalled and otherwise interfered with the investigations into those activities.

We know, for instance, how an RTC investigator, Jean Lewis, was suspended from the Madison case a day after senior Treasury officials tipped off the White House that a forthcoming criminal referral would likely lead to an additional criminal referral implicating the Clintons; we know that within 2 days of President Clinton being given this information he met with Governor Tucker, who was also named in the referrals; and we know that the referral that was made before Jean Lewis was removed was squashed by the U.S. Attorney in Little Rock Paula Casey, who was a former student of the President's who had worked on his presidential campaign. We also know that former Associate White House Counsel Neil Eggleston requested and obtained confidential Small Business Administration information relating to CMS, which he gave to Mr. Lindsey (when the Justice Department learned of this matter it ordered the White House to return the reports). As we have already noted, the President is accused of pressuring Judge Hale to make an illegal \$300,000 loan from CMS.

The most well-known questionable actions by the White House concern the events surrounding Vince Foster's death, which has been ruled a suicide. The night of his death, the White House refused at least four separate requests from law enforcement officials to seal his office or search it. However, that same night at least 3 high-level White House officials spent a great deal of time searching that office that they would not let law enforcement officials enter. Those officials were Bernard Nussbaum, Chief of Staff to the First Lady Margaret Williams, and Deputy Director of White House Administration Patsy Thomasson. Secret Service Officer Henry O'Neil testified before the Whitewater Committee that on the night of Mr. Foster's death Ms. Williams removed file folders from the White House Counsel's suite. We also have testimony from White House staffer and former Clinton campaign worker Tom Castleton that Ms. Williams asked him to carry a box of documents to the First Lady's residence that he understood to have been removed from Vince Foster's office. He further testified that Ms. Williams said that the documents "needed to be reviewed" by Hillary Clinton. Topping off this sequence of events is that on January 6, 1996, 2 years after they were first requested, the White House has turned over Mrs. Clinton's billing records from the Rose Law Firm, where she had worked as an attorney. Those records were covered with notes in Vince Foster's handwriting. The Committee was told that the records had mysteriously appeared in the personal residence of the White House in a room that only a handful of people are allowed to enter--after 2 years of trying to find these records, they appeared out of thin air on a table, and no one will admit to having any idea how they got there. Margaret Williams denies both taking anything from Vince Foster's office and taking a box of documents to the First Lady in her residence; the Clintons deny that they had anything brought to them to review from Vince Foster's office. The recent surfacing of these billing records gives the Senate a who-dunit: only a few people ever are let into the room where the notes are found; which one of them left those records on the table? The fact of the matter is that those records contained very critical evidence. Hillary Clinton was a partner at the Rose Law Firm, at which she did extensive legal work on behalf of Madison Guaranty, despite the fact that she was a business partner of the McDougals. Hillary Clinton's billing records show that her legal work for Madison included 60 hours of legal work for Seth Ward (Webster Hubbell's father-in-law and a Madison Guaranty official) on a sham transaction known as Castle Grande that cost the American taxpayers \$4 million. Before these records surfaced, Hillary Clinton in sworn testimony before the RTC said that she had "no recollection" of doing any work for Seth Ward. In our opinion, these facts indicate both a deep concern by the White House with the Whitewater investigation and a strong desire to keep the facts from being made public.

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The 2 years it took for the billing records to surface mysteriously is normal for this investigation. For 2 years, nearly every Administration official questioned has had convenient amnesia, has given misleading and conflicting statements, has taken months and even years to turn over subpoenaed documents, and has frequently "found" documents long after they were first subpoenaed. Though we encountered such delaying tactics in the short, initial investigation of two years ago, we did not expect the degree of obstruction that has dominated the current investigation. We set a target completion date of 1 year fully expecting to finish our work in much less time. We certainly did not expect that long-sought documents would still be turning up more than a year later.

Senate Democrats are very impressed by the quantity of documents that have been turned over by the White House, but the quantity is not nearly as important as the quality. The White House has had no problem in finding tens of thousands of pages of useless information to give the Whitewater Committee, but information directly relating to Whitewater has only gradually dribbled in. For example, when the Committee sought Ms. Williams' residential telephone logs covering the 2-day period after Vince Foster's death she waited 1 month and then she had her lawyer inform the Committee they no longer existed. The Committee then contacted the phone company and obtained the records within 1 week. A month and a half later Ms. Williams told the Committee she now had the records and would "cooperate." It took longer, 3 months, to obtain the phone records for 2 days for Hillary Clinton, and for Susan Thomases, an attorney and long-time friend and advisor of the First Lady, it took a full 6 months to obtain her telephone records. Similarly, the Committee had difficulty in gaining compliance with its much-broader request for all White House documents that reflect, refer, or relate to matters involving Whitewater or the handling of documents from Vince Foster's office. The White House released an "initial production" of documents in about 20 days. Two months after the initial request, and after the Committee had twice narrowed its scope, in many cases specifying the production of specific documents, and even specifying which rooms needed to be searched, the White House still had not complied, so the full Committee voted unanimously to issue subpoenas for those documents. The list of delays goes on and on. On March 1, 1996, 2 days after the Special Committee's funding expired, Deputy White House Counsel Bruce Lindsey's lawyer sent the Committee documents that it had requested on September 8, 1995. On February 7, 1996, Mark Gearan, former Director of White House Communications, produced handwritten notes proving for the first time the existence of a series of high-level Whitewater defense meetings in the White House during January of 1994. The release of Mr. Gearan's notes then resulted in the release of related notes that were taken by White House adviser Michael Waldman and by White House Deputy Chief of Staff Harold Ickes. On January 19, 1996, the White House finally agreed to begin the process of searching for electronic mail messages on Whitewater. We understand that being President has many prerogatives, but one of those prerogatives is not to ignore subpoenas until after an investigation is over. Further, Mr. Gearan's notes revealed that several task forces were set up at the January meeting to handle various aspects of the White House's strategy on Whitewater. Where are the notes from those task forces? We have received sparse documentation on what those committees did and why. If our colleagues get their way by setting a 5-week deadline, the Committee will never find out.

The Committee has also been stalled in its proceedings by the uncooperativeness of White House witnesses and other witnesses. All year long we have heard "I don't know" and "I don't recall." We have had to recall some of them two and three times for questioning as new facts have surfaced that they for some reason could not recall the first time they appeared. Certainly we are talking in many cases about events that took place years ago, but we are talking about very memorable events like bank fraud, illegal campaign contributions, defrauding the United States Government, suicide, and interference in criminal and civil investigations. The inability of witnesses to recall their actions surrounding such events is astounding, and unbelievable.

Despite all the delays, the Committee has conducted 172 depositions, examined 95 witnesses, and held 29 days of hearings. When it began this process, it was charged with making every reasonable effort to complete its investigation by February 29. By any reasonable measure, it has met this mandate. Through no fault of its own the investigation is not complete. Much information is still missing, and many witnesses have yet to be deposed.

If a deadline is imposed, the Administration will simply stonewall the Committee until it is reached. Senator Mitchell and Senator Cohen, in *Men of Zeal*, noted that they had come to the conclusion that deadlines should not be imposed in investigations because those people under investigation will stall matters until the deadline is reached. Senator Mitchell was obviously right, and our Democratic colleagues know it. On one point, our colleagues are correct--extending this investigation into the presidential election year does risk creating the appearance that Republicans are seeking partisan advantage. However, for the White House, it also keeps Whitewater an open public issue. Refusing to set a deadline will make cooperation much more likely and will result in the early completion of the Committee's work, quite possibly within the timeframe suggested by our Democratic colleagues.

Democratic politicians are alone in their filibuster to stop this investigation. Even their traditional allies in the press have abandoned them. Newspaper editorials are running four to one in favor of extending the hearings. For instance, the *New York Times* has called for an open-ended investigation, and the *Washington Post* has called for an investigation with a reasonable time limit.

Though we do not agree with a time limit, we are willing to compromise. We are willing to accept a 4-month limit. We are willing to gamble that the White House will not be willing to stall that far into an election year, and that we therefore will be able to get enough cooperation in that timeframe to complete the investigation. Unfortunately, our Democratic colleagues do not seem willing to compromise. They will not budge from their 5-week deadline, which will prevent the full facts on Whitewater from being revealed. They are fighting for a cover-up. We will not let them succeed. For as long as they continue their filibuster, we will continue to come to the floor to discuss the facts, convictions, indictments, and unresolved issues of Whitewater. We expect Democrats to move in

lockstep behind President Clinton on this vote, but we do not expect them to enjoy hearing Whitewater continually discussed on the floor, nor do we expect them to enjoy press reports on their cover-up. Thus, though we will not succeed on this vote, we expect soon to be able to reach a reasonable compromise with our Democratic colleagues.

Those opposing the motion to invoke cloture contended:

This resolution is motivated by politics. Our Republican colleagues would love to drag out the Whitewater hearings through the entire election year in an effort to cause political damage for the President. For one year now, they have issued one sweeping subpoena after another for documents, have taken countless depositions, and have heard numerous witnesses, yet they have failed to prove any wrongdoing by the First Lady, the President, or anyone else. This whole Whitewater matter has turned out to be all smoke and no fire. Our Republican colleagues obviously enjoy this smoke, though, because they have not tried to complete these hearings in a timely fashion. Though the statutory deadline for the Whitewater hearings was February 29, 1996, no effort was made to complete them. In fact, in the last two months, the number of Whitewater Committee's hearings dwindled sharply. Our colleagues talk about Administration delays--we see Republican delays. Even if one accepts the dark assertions that the late delivery of a few documents out of hundreds has less to do with human error than with an effort to cover up wrong-doing, we note that the Committee now has the documents it has requested. The record is complete--it is time to wrap this matter up.

Republicans, want us to give them \$600,000 more and an unlimited amount of time to keep this unwarranted investigation alive. We will not support an unlimited extension for this costly, dead-end investigation. Our Republican colleagues should not want an unlimited extension either, because the American public would rightly perceive it as a political ploy. Up to now, the Whitewater Committee has been able to operate in a spirit of bipartisanship, but an unlimited extension would turn it into a partisan circus.

The Minority Leader has made a counter-offer to the Republican proposal that we think is generous. That proposal is to extend the hearings until April 3 and to complete the final report on them by May 10, with additional funding of \$185,000. Over the next several weeks, an intensive hearing schedule could be held to wrap matters up quickly, just as was done in the Iran-Contra hearings. We remind our colleagues that a strict time limit to those hearings was agreed to by the then-majority Senate Democrats in order to accommodate Republican concerns that the hearings would be dragged on through an election year for political purposes. Our colleagues should do the same. These hearings have already lasted far longer than the Iran-Contra hearings, and we believe they involve less weighty public policy issues. In fact, more than 2 years have elapsed since the first hearings were held last Congress on the so-called Washington phase of the investigation.

To date, the Senate Committee has spent \$1.3 million, the independent counsel has spent \$26 million, and the independent Pillsbury firm hired by the Resolution Trust Corporation to determine if a civil suit should be brought against Madison spent \$4 million. The \$30 million expenditure that has failed to uncover any serious wrongdoing could have instead bought 26 million school lunches or put 400 more cops on the streets. Instead, it was spent trying to create the perception in the public's mind that the President and First Lady had engaged in questionable or criminal conduct. Similarly, the time wasted by Senators on this investigation could have been better spent holding hearings on health care reform or other pressing issues. We cannot recover the lost time or money, but we can prevent further wasting of both.

Some Senators have suggested that another major reason for extending the trial, beyond the alleged stalling by the White House, is that they will not be able to hear the testimony of some witnesses until after the criminal trials of Governor Tucker and the McDougals, who are under indictment for Whitewater-related charges. They tell us that some witnesses if called now would invoke the fifth amendment because of those pending trials. However, we do not know on what basis they think those witnesses would be any more willing to testify after those trials. We will not extend the hearings on a hope.

This investigation has been just one enormous witch hunt. One of the subpoenas that was issued was for every call from the White House to Arkansas over a 7-month period. The investigators were not looking for anything specific--they were just demanding the right to sift through every White House record they could get their hands on in the hope they could find a shred of evidence of wrongdoing. The extensive scope of some of the subpoenas is a major reason for the delay in the production of some documents. Every lawyer knows in every major investigation when documents are sought some are going to be inadvertently overlooked. When and if they are found later, they are turned over, and the innocent explanations that are given are true. The same applies in this case.

As for the supposedly misleading statements by witnesses, and their supposedly large number of "I don't recall" statements they have made, we note for our colleagues that many of the events we are talking about occurred 10 years ago. Our colleagues may find something sinister in faulty memories of specific events on specific days 10 years ago, but we see simple failures of memories. Truthfully, some of these witnesses should never have been called. It seems to us that for some time the Whitewater Committee has simply been dredging the bottom in an attempt to find anything even remotely substantive in order to justify its existence.

It is time to bring this fishing expedition to an end. The Whitewater fishing expedition has not landed any whales, or even minnows. It would be disgraceful for the Senate to allow it to continue. This political sideshow must end. This resolution must not be allowed to pass.